RECENT CASES

CARRIERS — ABANDONMENT OF BRANCH — RIGHT OF INDIVIDUAL TO SUE FOR DAMAGES. — The defendant extended a branch line to Corbin, where the plaintiffs' mines were situated, and operated a spur from the branch line to the mines. In reliance on the extension of the branch and spur, the plaintiffs invested a considerable amount of capital in developing the mines. Some years later, the defendant tore up the Corbin branch and spur, leaving the plaintiffs without adequate railroad facilities and greatly increasing the cost of transportation. The plaintiffs brought an action to recover the damages resulting from the increased cost of transportation. The defendant demurred to the complaint. *Held*, that the demurrer be sustained. *Helena & Livingston Smelting & Reduction Co.* v. *Northern Pacific Ry. Co.*, 204 Pac. 370 (Mont.).

If a common carrier, without cessation of business, refuses to accept goods properly tendered for carriage, it violates a duty owed the shipper and he may recover for damage suffered. *Hall* v. *Cumberland Pipe Line Co.*, 237 S. W. 405 (Ky.). See *Eastern Ry.* v. *Littlefield*, 237 U. S. 140. But a railroad owes shippers no duty to stay in business. With the sanction of the legislature it may with impunity relocate its line. *Bryan* v. *Louisville & N. Ry. Co.*, 244 Fed. 650 (8th Circ.). It may violate its franchise by the abandonment of a particular type of service and not be liable to various individuals thereby affected. *Kinealy* v. *St. Louis, etc., Ry. Co.*, 69 Mo. 658. Such duty as it may owe to continue in business it owes only to the state. See Wesley N. Hohfeld, "Fundamental Legal Conceptions," 23 YALE L. J. 16, 51. But see WYMAN, PUBLIC SERVICE CORPORATIONS, §§ 330–333. In appropriate cases the state may enforce this duty by *mandamus*. *Brown* v. *Atlantic & B. Ry. Co.*, 126 Ga. 248, 55 S. E. 24; *State* v. *Spokane Street Ry. Co.*, 19 Wash. 518, 53 Pac. 719. See WYMAN, *op. cit.*, § 305. See 22 HARV. L. REV. 367; 26 HARV. L. REV. 659. Or the state may allow an individual to bring *mandamus* on behalf of the state. *Union Pacific R.R. Co.* v. *Hall*, 91 U. S. 343. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., § 430 *et seq.* Where this mode of proceeding is permitted the individual's substantive rights are in no way enlarged. Even if, in the principal case, the plaintiff might have compelled the railroad to continue operation, he has no cause of action because of damage sustained through increased cost of transportation due to the discontinuance of the Corbin branch.

CONSTITUTIONAL LAW — DUE PROCESS — CONSTITUTIONALITY OF THE SERVICE LETTER LAWS — ATTITUDE OF THE COURTS. — A statute provides: "Whenever any employé of any corporation doing business in this state shall be discharged or voluntarily quit . . . it shall be the duty of the superintendent or manager of said corporation, upon the request of such employé . . ., to issue to such employé a letter, duly signed by such superintendent or manager, . . . truly stating for what cause, if any, such employé has quit such service" (1919 MO. REV. STAT. § 9730). The plaintiff brought an action under the statute for failure to give the required letter. The defense alleged that the statute was unconstitutional, depriving the employer of liberty without due process of law. *Held*, that the judgment for the plaintiff be affirmed. *Prudential Ins. Co.* v. *Cheek*, 42 Sup. Ct. Rep. 516.

The plaintiff brought an action under a similar statute. (OKLA. REV.

LAWS, § 3769.) The ground was that a letter incorrectly stated the facts. Judgment having been entered for the plaintiff, the defendant sues out a writ of error to test the constitutionality of the statute under the Fourteenth Amendment. *Held*, that the judgment be affirmed. *Chi., R. I. & Pac. Ry. Co.* v. *Perry*, 42 Sup. Ct. Rep. 524.

For a discussion of the principles involved, see NOTES, *supra*, p. 195.

CONSTITUTIONAL LAW — POLITICAL QUESTIONS — CONSTITUTIONALITY OF ACT TAXING INCOME OF EMPLOYERS OF CHILD LABOR. — An act of Congress imposed an annual ten per cent tax on the net profits derived from the sale of products of industrial units in which children under certain ages had been employed during specified hours for any portion of the taxable year. The plaintiff sued to recover a tax assessed under this act and paid under protest. *Held*, that a judgment for the plaintiff be affirmed. *Bailey* v. *Drexel Furniture Co.*, 42 Sup. Ct. Rep. 449.

The invalidation of the Child Labor Tax Law was in no small measure due to the inartistic way in which it was framed. Before the decision in the principal case the United States Supreme Court had gone very far to sustain acts which on their face purported to be taxing acts, but which, because of the excessive rate of taxation, were open to suspicion as attempts to destroy the subjects taxed. The court refused to inquire into the motives of Congress in the exercise of its granted power of taxation. *Veazie Bank* v. *Fenno*, 8 Wall. (U. S.) 533; *McCray* v. *United States*, 195 U. S. 27; *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *United States* v. *Doremus*, 249 U. S. 86. See 35 HARV. L. REV. 859. In the principal case the court felt unable to indulge in a "presumption of validity" because of plain indications on the face of the act that it was intended not to impose a tax but to regulate a subject not properly within the control of Congress. However, the court might have supported even such an act by extending the principle indicated in the *Veazie Bank* and *McCray* cases, that the limitations on the exercise of the power of Congress to tax is a political question, and might have refused to examine an act which on its face purported to be an excise tax, although its provisions gave some indication to the contrary. *Cf. Luther* v. *Borden*, 7 How. (U. S.) 1; *Pacific States Tel. Co.* v. *Oregon*, 223 U. S. 118. See 35 HARV. L. REV. 858.

CONTRACTS — CHARTER-PARTY — REQUISITION BY GOVERNMENT. — The plaintiff, in 1912, chartered a ship from the defendant's predecessor in title for use during seven St. Lawrence seasons with an option of three additional seasons. The charter-party contained the customary "restraint of princes" clause. The ship was used for three seasons. It was requisitioned by the government for four months in 1915 during which time the plaintiff paid no charter hire. Later in 1915, the defendant became owner of the ship, and a novation was made between the parties. The ship was requisitioned again in 1916 for three months during which period the plaintiff did pay the charter hire. Both parties treated the charter-party as still in existence. The hire paid by the government to the defendant and his predecessor during the periods of requisition was considerably in excess of the amount payable under the charter-party. The plaintiff sues for this excess and for the charter hire paid by him in 1916. *Held*, that judgment be entered for the plaintiff for the amount of excess only. *Dominion Coal Co.* v. *Maskinonge Steamship Co. Ltd.*, 127 L. T. R. 307 (K. B.).

Considering the short duration of the periods of requisition and the conduct of the parties, it is very probable that there was no "frustration of adventure" in this case. *Tamplin Steamship Co.* v. *Anglo-Mexican*